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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-fifth session

SUMMARY RECORD OF THE 6th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 5 August 1993, at 10 a.m.

Chairman: Mr. EIDE

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The meeting was called to order at 10.10 a.m.

ELIMINATION OF RACIAL DISCRIMINATION (agenda item 5) (continued)

(a) MEASURES TO COMBAT RACISM AND RACIAL DISCRIMINATION AND THE ROLE OF THE SUB-COMMISSION (continued)

(b) MONITORING THE TRANSITION TO DEMOCRACY IN SOUTH AFRICA (continued) (E/CN.4/Sub.2/1993/11)

1. The CHAIRMAN said that, pursuant to the decision adopted the previous day, the text of the statement on Bosnia and Herzegovina which the Sub-Commission had approved at its fifth meeting had been transmitted to the President of Bosnia and Herzegovina, to the Co-Chairmen of the Steering Committee of the International Conference on the former Yugoslavia and to the Secretary-General of the United Nations.

2. Mr. YAKA (International Federation of Human Rights - FIDH) welcomed the decision taken by the Commission on Human Rights in resolution 1993/20 to appoint a thematic special rapporteur to address the issue of contemporary forms of racism, racial discrimination and xenophobia that occurred in any part of the world, as a result of the recommendation made by the Sub-Commission. The implementation, in a non-selective manner, of Commission resolution 1993/20 still was awaited impatiently, for, although the "contemporary" forms of racism and racial discrimination were spectacular in the Western countries, they were also prevalent in other continents. Unless the situations in the former Yugoslavia, Germany and France as well as those in Mauritania and so many other countries were addressed, the credibility and effectiveness of the procedure would be destroyed.

3. With regard to the case of Kosovo, the situation there had been described at the previous session as apartheid, as defined in article II of the International Convention on the Suppression and Punishment of the Crime of Apartheid; a political process had led to a sort of "ethnic cleansing". Speaking in his capacity as an activist of the Council for the Defence of Human Rights and Freedoms in Kosovo, a member of the FIDH, he wished to inform the Sub-Commission of the current situation in Kosovo. Since the Sub-Commission's forty-fourth session, the policy of terror and repression, backed up by an arsenal of segregationist laws, had continued and approximately 350,000 persons from Kosovo of Albanian origin had been forced to leave the area. Of the 180,000 Albanians from Kosovo who had had jobs, only 33,000 had not been dismissed on grounds of discrimination. Those dismissals had occurred in key sectors, particularly in the public service, with disastrous consequences for the community of ethnic Albanians. To take just one example, the magistrates of Albanian origin had all been replaced by Serbs, which meant that persons of Albanian origin had lost all confidence in the judicial system as a whole.

4. With regard to education, there seemed every reason to believe that, as in previous years, the Serb police would prevent the 70,000 secondary school pupils and the 20,000 students of Albanian origin from returning to their schools at the end of the annual holidays. Although the 320,000 pupils in primary schools would probably be allowed to return to school, they would have

no text books as their publication had been prohibited by the Serbian authorities. Teachers of Albanian origin in the primary schools would also probably have to work, but without remuneration.

5. The use of the Albanian language was still prohibited. The public services and State enterprises were not the only ones concerned; doctors, for example, had to write prescriptions in Serbian even when their patients did not understand the language.

6. Police repression was increasing and police harassment in Kosovo was a common occurrence and had increased following an attack on Serbian police officers. At least 5,000 persons of Albanian origin were known to have been ill-treated by the Serb police in the previous year. The actual number was certainly much higher, but in such cases victims were understandably reluctant to approach human rights organizations for fear of reprisals. Human rights activists and workers were in the front line and three members of his own organization had been brutally beaten up. Last month, following a police raid on its offices, a considerable amount of documentation had been confiscated.

7. The withdrawal of the CSCE observers following the refusal of the Serb authorities to allow them to extend their stay, was of major concern. His organization feared that their departure would be a signal for the Serb authorities to step up their campaign of repression. It therefore appealed to the international community to take energetic preventive action to ensure that the tragedy in Bosnia did not spill over into Kosovo.

8. In another context, in France, the submission and adoption of legislation amending the requirements for acquiring French nationality, the entry and residence in France of foreigners, as well as more restrictive identity checks had been condemned by the FIDH and the French League for Human Rights. The new legislation undermined fundamental rights guaranteed by international instruments to which France was a party and reversed the century-old tradition of access to French nationality, on the basis of jus soli. The reforms seemed to be targeted specifically at French public opinion and would be likely to increase racism and intolerance. It was to be hoped that the French Government's delay in submitting its report to the Committee on the Elimination of Racial Discrimination was not an indication of a lack of interest in implementing the International Convention on the Elimination of all Forms of Racial Discrimination.

9. The situation of the Roms (gypsies) in Europe, was still giving cause for considerable concern and the Sub-Commission should continue its efforts to help them. For example, Germany's mass expulsion of Roms to countries where they might face persecution was unacceptable, as was Germany's signing of bilateral conventions with those countries confirming the expulsions. The distress signal by 350 Roms who had occupied the former concentration camp of Dachau should be heeded.

10. Although the resurgence of racism was particularly noticeable in Europe, it also occurred in other continents. For example, the FIDH was concerned by the situation of black, Halpulaar or Peul Mauritanians. They were victims of widespread discrimination and the persons guilty of the massacres which had

taken place in 1990 and 1991 had been amnestied. Persecution was continuing and tens of thousands of black Mauritanians who had sought refuge in Senegal and Mali were afraid to return to their country.

11. The FIDH hoped that the Sub-Commission and the Commission Special Rapporteur would attend to all those situations, notwithstanding their diversity and complexity.

12. Mr. WAREHAM (International Association against Torture IAAT-AICT) said that it was abundantly clear that the issue of racism and racial discrimination was worsening rather than improving. The AICT believed that one of the major obstacles to progress was the United Nations inability or unwillingness to ensure a single standard of application and enforcement. Contemporary and past history need to be examined to determine where the real consistent and persistent incidences of racism and racial discrimination lay. However, to resolve a problem there first of all needed to be an acknowledgement that a problem existed. If, in 1993, the representative of a leading Power could discuss the issue of racism and racial discrimination in the world and only cite as examples Bosnia and Herzegovina, Angola, Somalia and Cambodia, while criticizing the United Nations from an overpoliticization of that theme and for an over-emphasis on South Africa, the issue would never be resolved.

13. Whatever problems existed in the "developing world" were often a result of behaviour learned from former colonial masters. It had been the Western world which, to justify the African slave trade, had taken the centuries-old problem of colour prejudice and institutionalized it into the ideology of racism. To understand its origin and why it persisted, it had to be recognized that its basis was and always had been economic, the creation and maintenance of wealth. As Commission on Human Rights resolution 1993/20 had acknowledged, the present conflict over economic resources in the world had only intensified the problem.

14. There was possibly a lack of understanding as to why the AICT came to the Sub-Commission and during the previous five years had attempted to have the situation of 40 million descendants of the victims of the African slave trade in the United States addressed. An objective review of its statements showed that the people of African descent in the world's most economically developed and allegedly "most democratic" country had never received reparation for the harm they had been subjected to historically and were still suffering the ravages of racism in every sphere of life. Within the United States of America, two separate societies continued to exist, a reality that had been pointed out 25 years previously in the Kerner Commission report authorized by President Johnson after the racial rebellions of the 1960s. The facts spoke for themselves - the infant mortality rate of black children continued to be more than double that of whites and higher than that of some so-called "developing countries". The rate of incarceration of young black males in the United States was four times that of black males in the "over-emphasized" apartheid state of South Africa. The root cause of the housing crisis faced by blacks and Latinos was racism, according to Henry Cisneros, the Mexican-American who headed the Federal Department of Housing and Urban Development.

15. In June 1993, the United States Supreme Court had continued its attack on the affirmative action measures that had been so reluctantly taken to redress the effects of racism, that time in the electoral arena. At the same time, the United States President had abruptly withdrawn his support for a black woman, Lani Guinier, who had advocated novel and realistic approaches to the same problem, to head the Civil Rights Division of the United States Justice Department. Similarly, Carol Mosely Braun, the first black woman to be elected to the United States Senate had publicly to berate that old boys' club for males (Braun and Ben Nighthorse Campbell, a Northern Cheyenne, were the only people of colour in the Senate) which had given the Senate's imprimatur to a group's use of the Confederate flag. The defenders of the Senate action argued that the fact the flag symbolized those who had fought to uphold slavery during the United States Civil War had nothing to do with race or contemporary society.

16. In the area of racism, there was no difference between the foreign and domestic policies of the United States. Its immigration policy had always been heavily weighted in favour of European immigrants. Only recently, with the influx of peoples of colour, had talk of restrictions increased. The same held true for asylum. While Germany had quite rightly been criticized for adopting more restrictive policies on asylum as a response to their problems of racism, the United States President was proposing legislation that would have the same effect while still maintaining the appearance of a democratic process. The blatant racism of such moves could be seen when Haitian asylum seekers, identified as HIV positive, were refused entry and imprisoned on a United States military base in Cuba, while Cuban citizens who were denied entry visas by the United States could gain immediate entry into the United States without fear of punishment simply by hijacking a plane. Many of the conflicts which were arising between Koreans and members of the black communities in which they had set up businesses stem from the racist stereotypes of blacks that the United States had exported around the world via its media, armed forces, etc.

17. One of the greatest weaknesses of the first two Programmes of Action had been that neither the United States, Great Britain, Canada, France, Germany, nor the other members of the WEO (Western European and Other) Group had been held accountable for their historical and contemporary human rights violations. Such double standards had undermined the credibility of the United Nations in terms of addressing racism anywhere in the world.

18. The issue of South Africa had a two-fold relevance. There were common bonds with the black population there because of the similarity of the struggles they had waged. The apartheid and Jim Crow laws had both been the product of the same profit-oriented, racist mentality. The overturning of Jim Crow only replaced de jure racism with its de facto expression. White power remained entrenched. There were similarities with the situation in South Africa, where the formal dismantling of apartheid went hand in hand with State-sponsored acts of so-called black on black violence accompanied by paramilitary training of the minority white populace and the assassination of the leadership deemed the greatest threat to continued white rule, namely, Chris Hani. One further concern with regard to South Africa was the sense that those who criticized the United Nations supposed overemphasis on apartheid were trying to make substantial white participation in the new

South Africa a little more acceptable by obstructing any further intensive scrutiny of it. At the same time, those people would like to equate the dismantling of apartheid with the elimination of racism as an agenda item worthy of United Nations consideration.

19. Concerted attempts were being made to relegate racism to the backburner. It could be seen in the weakening of language between the time it left the Commission and emerged (if it did so) from the Commission on Human Rights. It could also be seen in the use of terms like "new forms of racism" which some defined as there being no historical connection between neo-Nazis and Nazis or between the Aryan nation and the Ku Klux Klan. It could be seen in the secondary role racism had played in the Vienna Declaration of the World Conference on Human Rights. It could also be seen in the thinly veiled threat of blackmail in the statement of a certain country that its participation in and funding of certain bodies was contingent on getting its own way.

20. The AICT was confident that the Sub-Commission would not succumb to that trend. The Sub-Commission had always been the standard-bearer inside the United Nations for taking the correct and advanced, if not always popular, position on racism and racial discrimination. The Sub-Commission had passed the resolution calling for the introduction of the thematic special rapporteur and highlighting North America and Europe as a focus of racism in the 1990s. By its actions it had pointed out the need for a single standard of enforcement.

21. The AICT believed that the Programme of Action for the Third Decade should include the steps suggested in the Secretary-General's report (A/47/432), particularly the idea of regional seminars and workshops, annual reports and a standing committee of the Commission on Human Rights to evaluate the reports. Such mechanisms could provide the necessary historical background and be an effective way constantly to monitor and maintain accountability for all Members of the United Nations. They could identify persistent and consistent problems, as well as those in their embryonic stage, and suggest actions that might prevent problems in the future. For example, the rebellions that followed the first acquittal of the white police officers who beat black motorist Rodney King in Los Angeles, had been a response to years of de facto impunity granted by the United States criminal justice system to law enforcement officers around the country who daily engaged in brutal acts against black and Latino people. Having exhausted domestic legal remedies and not being aware of any international ones, the people had taken up what they perceived to be their only remaining option in the form of street protest.

22. Similarly, the Programme of Action should include a mandate for the thematic special rapporteur to begin work in North America and then move on to Europe, backed up by substantial financial and resource support. Furthermore, all Member States should ratify the legislation prohibiting racial discrimination and there should be a plan to implement the findings of the study on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms.

23. Mr. KIRKYACHARIAN (Movement against Racism and for Friendship among Peoples) said that there was no shortage of pessimistic judgements on the

state of the world and its problems, but it was necessary to look beyond the disarray produced by the new phenomena confronting society in an attempt to find a solution.

24. It was difficult to isolate the political and social factors that had to come into play in dealing with inter-ethnic wars or the continued existence of apartheid. The blatant social inequality inherent in the system of apartheid needed to be rectified through the introduction of universal suffrage which would allow the black population to play a full role as citizens.

25. In addition, the developed countries needed to make a considerable effort to help all victims of the current crisis and to eradicate poverty. Social and cultural deprivation should no longer be tolerated and regarded as inevitable. The poor and the excluded could not participate and contribute fully as citizens.

26. Further, he noted that the expulsion of potential immigrants and the sealing off of borders were being presented as measures capable of curbing the spontaneous racism of the developed countries now facing a crisis. Governments were proclaiming their desire to combat racism fostered, according to them, by the presence of too many foreign men, women and children, seen by some as unable to assimilate and as dangerous. Sooner or later, Governments would have to realize that such measures, far from reducing racism actually encouraged it and played into the hands of the politicians of the extreme right wing who blamed all the evils of Western society on the presence of groups of foreign origin.

27. It was imperative that Governments should institute criminal proceedings against those who engaged in racist and xenophobic conduct and propaganda. Social conditions did not create racism but were conducive to demagogic exploitation. The desire for lucidity in sociological analysis should not provide a cover for those who professed racism to be a natural phenomenon.

28. The French Government had given the assurance that measures would be taken to monitor more closely the activities of racist groups. The German Government had disbanded some neo-Nazi groups and other Governments had prohibited meetings on their national territory of the international extreme right wing. But, that was not enough. European countries should pool their experiences and on that basis draw up common legislation to combat racism. The European Parliamentary Assembly had called for a common policy to be implemented on citizenship in respect of non-European migrant workers and their families. Unfortunately, the debates on the Maastricht Treaty had paid little attention to that issue.

29. The Sub-Commission, by reason of its independence, could greatly influence the thinking of Governments. Racism and inter-ethnic wars and other forms of exclusion should and could be combated. The growing number of non-governmental organizations involved in combating racism urged the Sub-Commission to draw up recommendations that were as strong and comprehensive as possible.

30. Mr. OZDEN (Centre Europe-Tiers Monde (CETIM)) said that in recent years both the debate on discrimination and its forms had changed, in particular

with regard to immigration. Although they no longer emphasized the criterion of race but that of cultural difference, they were racist in so far as they aimed at the exclusion of certain persons and groups.

31. Consequently, CETIM wished to draw attention to the new policies on immigration and asylum which had been introduced in a number of European countries. They affected in particular persons who had been forced to leave their own country in search of work or to seek the protection of other States. In a rapidly changing world, there was an increasing number of reasons for leaving or fleeing one's country. At the same time, the rights relating to immigration and asylum were being eroded. Those measures were part and parcel of a more restrictive attitude taking hold in Western Europe. The Schengen agreements established a policy of segregation, often based on cultural differences.

32. Switzerland was no less affected by the climate prevailing in Western Europe and had been said to pursue a policy of "soft-apartheid". Switzerland had a three-tier policy towards foreigners and immigration. At the first level, the free movement of persons - of persons from the EEC or EFTA countries - was permitted. At the second level were the countries from which Switzerland wished to recruit workers in case of need, including the United States of America and Canada, and possibly central and Eastern Europe. At the third level came all other countries, whose nationals were granted permission to stay or work in Switzerland only in exceptional circumstances.

33. In effect, the three levels meant that the free movement of persons was both selective and hierarchical. In effect, the countries and their nationals (refugees and economic migrants) were classified on a geographical basis, which represented a new form of discrimination. The three-tier system categorized migrants and refugees according to geographical zone and then subsequently graded the zones, differentiating between prosperous and poor areas of the world. It also introduced discrimination based on cultural differences and established a hierarchy of cultures, some of which were excluded.

34. CETIM was not only concerned about Swiss policy towards economic migrants and refugees but also that of Western Europe in general and would soon be publishing a text detailing its concerns.

35. It should also be pointed out that Switzerland was, belatedly, on the verge of ratifying the International Convention on the Elimination of All Forms of Racial Discrimination. In order to do so, the Swiss Government had put forward two reservations, one on freedom of expression and the other to ensure that Switzerland had a free hand in its policy for the admission of foreigners as defined in the three-tier model. Such a policy nevertheless contradicted the text of the Convention. The Swiss Parliament had accepted the two reservations and adopted criminal legislation to accompany the ratification of the Convention.

36. The position of the Swiss authorities was not sufficiently resolute in combating exclusion, which was the only way of preventing racism. Switzerland might well reject racist acts but it still pursued a policy which discriminated against foreigners. That lack of clarity was reflected in the

country by the launching of a referendum against the above-mentioned legislation which was designed to fine or imprison those found guilty of racist acts. If the referendum was successful, the Convention would probably not be ratified.

37. The extent to which the reservation on immigration policy to the Convention against All Forms of Racial Discrimination was incompatible with the Convention should be ascertained. The Committee on the Elimination of Racial Discrimination should, if appropriate, request Switzerland to abandon immediately the three-tier model or any other model which institutionalized discrimination vis-à-vis individuals and social groups on the basis of their origin.

38. Consequently, CETIM urged the Sub-Commission to make representations, on the one hand, to the European countries which were implementing exclusion policies on the basis of the origin of migrants and refugees and secondly, to the Swiss Government to abandon the three-tier model and, consequently, its reservation to the Convention.

39. Ms. BOUVIER (Minority Rights Group) said that the NGO World Conference on Human Rights held in New Delhi in 1990 had reached the following conclusions. The phrase "ethnic, social and religious conflicts" was often misleading and such conflicts were frequently the result of certain politicians (and certain religious leaders) manipulating a situation in order to obtain power and control over resources. Tensions between communities were largely centred on the control of resources and heightened by poor economic conditions. So-called religious conflicts were not essentially over doctrine but rather between people who happened to belong to a religion. Authoritarianism as a response to political and economic challenges was often associated with the abuse of power by a dominant, ethnic majority and its most blatant expression was through the excesses of military or law enforcement authorities identified with the ethnic majority. When the State was strongly identified with the religion and culture of a majority, minorities became alienated and religious minorities tended to become exclusivist which, in turn, escalated conflict and inhibited dialogue. Minorities were often marginalized by those in power and indeed minorities could be defined as a group of people, including women, who were without any share in power. More effort should be made to resolve conflicts peacefully, including an early analysis of the factors leading to the marginalization of groups; it was important for all communities to recognize their responsibilities towards other communities. In view of the limitations of the State and its centralized structural framework in finding solutions, the crucial issue was the devolution of power both structurally and geographically, and the granting of autonomy in many areas while respecting the integrity of the State. Non-governmental and intergovernmental organizations, especially the United Nations, had a crucial role to play in promoting research, disseminating objective information and bringing communities together.

40. The division of minority rights into the prevention of discrimination and the protection of minorities was a helpful one. The protection of minorities was a complex notion and within the Sub-Commission it had been interpreted by some members as going well beyond the equality of treatment into special measures for a limited duration to redress historical injustices and the

equivalent treatment of minorities and majorities in the field of group protection. Individual human rights enjoyed by minorities should nevertheless be no more or less than those afforded to all members of society.

41. The records of the Commission on Human Rights and Sub-Commission showed that presentations on the gross abuse of individual human rights were often linked to minority communities. Discrimination might be directed at individuals but was usually targeted at people from ethnic, religious or linguistic minorities and went to the very basis of their identity. The notion of persons belonging to minorities having a free choice on whether or not they belonged to that group was purely academic if they were clearly identified by others as belonging to the group.

42. The inclination of many people to consider themselves superior to others led to prejudice and discrimination against "outsiders". It was a phenomenon in almost all societies, not least of all in Europe where there was often smug complacency about human rights. The growth in racist violence in Western Europe and propaganda by many European Governments against asylum seekers who were rarely treated with the dignity every human being deserved, showed that the North had much to learn from the South about human values.

43. Members of law enforcement agencies, particularly the lower ranks, often succumbed to prevailing xenophobic stereotypes particularly when the minority in question maintained distinct characteristics felt to be provocative by members of majority groups. For instance, the nomadic lifestyle of the Roms (gypsies) generated a hostility among settled populations and law enforcement officials rarely managed to show complete impartiality and objectivity in dealing with such situations.

44. Achieving group rights for minorities was highly complex. Protecting and promoting the identity of minorities was a cardinal principle of minority rights, but should not be to the detriment of any other communities or of individual right. Promoting identity and integration was likely to remain a source of dynamic tension in all multi-ethnic States.

45. Special measures for minorities even for a limited duration remained a controversial issue. President Havel had quite rightly pointed out that group rights of the majority were provided by the State and the equivalent (not identical) group rights should also be provided for minorities, since minorities were also members of the State.

46. The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities provided a framework for protecting individual rights and promoting group rights. If implemented in Europe in particular, it would provide a new framework of positive measures to prevent racism. Some European States had been very cautious in protecting minorities.

47. As a matter of urgency, the Minority Rights Group wished to echo the recommendations of the NGO World Conference on Human Rights that: the Commission on Human Rights should establish a working group on minority issues to consider issues including racism that required very early action; policies and programmes that demonstrated good practice in implementing the Declaration should also be considered by the working group and publicized by the

United Nations; States should be encouraged to establish mechanisms to assist in the implementation of the Declaration; and information, education and training measures should be undertaken in conjunction with NGOs and the United Nations Centre for Human Rights.

48. Mr. AKTAN (Observer for Turkey) said that over the previous year the number of racist incidents in Western Europe had increased sharply. The international community had responded to that challenge at the forty-ninth session of the Commission on Human Rights and at the 1993 World Conference on Human Rights and Turkey had played an active role in those deliberations. While his country's immediate concern was the fate of Turkish workers in Europe who were exposed to racist attacks, in a broader sense it regarded racism as potentially dangerous to friendly relations between States. It also surmised that, although seemingly unrelated, racist undercurrents might be, at least partially, responsible for human rights violations beyond their proper context, for instance, in the form of ethnic terrorism in other countries.

49. Turkey had commissioned two independent studies on the subject. Their findings and conclusions might help clarify the conceptual confusion in that area. They stated that racism, in the sense of the biological superiority of a "race" over others was historically a recent phenomenon and geographically it developed in Western Europe and its white-race-dominated colonies in other continents. In other words, the temporal and spatial boundaries of racism were fairly narrow and quite distinct.

50. Despite their frequent confusion, race and ethnicity were not identical categories. Racial distinctions were based on the assumption that human beings could be divided into different sub-species according to their genetic characteristics, whereas ethnic discrimination was based on language, religion or cultural differences. Those distinctions had been confused after the Second World War, since neo-racism had chosen to conceal itself behind a perverse interpretation of cultural relativism thereby creating confusion between racism per se and ethnic discrimination. Unfortunately, the International Convention on the Elimination of All Forms of Racial Discrimination had also contributed to that confusion by considering all sorts of discrimination under the heading of racial discrimination and giving the impression that racism was a worldwide phenomenon.

51. Racial discrimination and ethnic discrimination drew on different sources and were the product of different social, cultural and political settings. Confusing the two might give the impression that racism existed in all societies and was not an exceptional phenomenon plaguing only some cultures. That did not mean that ethnic discrimination was less important or its consequences less serious; the case of Bosnia and Herzegovina had shown that ethnic conflict could be catastrophic, even genocidal. It was nevertheless not the same as racial discrimination.

52. In an ethnic conflict there were normally two conflicting sides, usually fighting for a piece of land, whereas in a political and ideological conflict two or more sides fought for political power or domination. In an armed ethnic conflict the two sides eventually came to hate each other.

53. In racism, however, there was no conflict or conflicting sides. One group victimized another group with an inexplicable hatred and violence, although it did attempt to rationalize its motives. The victims of racism were not demanding land or political power, it was their very presence that seemed sufficient to prompt racial hatred and violence in the racist group.

54. The arguments used to justify racism were easily refuted. For instance, it was claimed that economic crisis and the resultant unemployment, together with an increasing number of foreigners were causes of racist incidents. Nevertheless, in many developing countries suffering a more severe economic crisis and a greater influx of foreigners, there were no racist incidents. Moreover, in countries where racism was rampant, unemployed host workers were rarely involved in racist violence. Even if sectors of society were against the increase in the number of immigrants and asylum seekers, they could and should find far more civilized ways of expressing their protest than by killing, beating or burning foreigners. Restricting or even halting immigration would not reduce or eliminate racism since new target groups would be found. Unless a quick remedy was found, the seeds that racism had already sown would bear the fruit to durable enmity between nations and States, eventually endangering regional and international peace and stability.

55. An unexpected but dangerous result of racism was its indirect contribution to human rights violations and seemingly unrelated areas such as ethnic terrorism in other countries. It was interesting to note that, with few exceptions, human rights circles were not really interested in the lot of foreigners subjected to racist violence in their own countries. It would be simple-minded to think that NGOs consciously tried to deflect attention from the ills of their own societies. It might also be unfair to accuse the NGOs of outright racism since there was probably a more subtle mechanism at work preventing them from identifying with and defending the human rights of victims of racism.

56. There were similarities between racism and ethnic terrorism. The racist resorted to terrorism against a minority group, whereas the terrorist attacked the majority. Both racists and terrorists aimed at purifying their "land" from target groups, dehumanizing them and perceiving them as the source of all evil. Both racists and terrorists try to solve their identity crisis by killing members of the target group and did not attempt to solve their "problems" through other more civilized means. Both racists and terrorists believe that the groups in whose name they acted supported them in their despicable actions.

57. In view of the above, the overt support given by the terrorist leader in his country to the racist violence against Turkish workers in another country was perhaps more easily understandable. Perhaps the only way to explain the attitude of the human rights circles was that a highly sophisticated, even sublimated form of racism, was operating and that even they did not comprehend its mechanism. As long as those circles played that unconscious game, there would be no solution to racism in their countries and to ethnic terrorism in other countries.

58. Mrs. MREMA (Observer for the United Republic of Tanzania) said that although some positive changes had taken place in South Africa since 1990, the

process of transition to democracy was still far from being realised. The Special Rapporteur's preliminary report (E/CN.4/Sub.2/1993/11) had fully covered the positive steps taken by the South African Government to change the status quo, but had warned that if the violence in the country continued unabated, a peaceful transition to democracy might not be achieved. Despite varying statistical figures for the number of deaths and other serious crimes, the fact remained that the repressive system of apartheid in South Africa continued to generate hatred and internal conflicts.

59. The violence was taking place on two fronts, one of them being blacks against blacks. That violence was largely the result of the breakdown of multi-party talks at the Convention for a Democratic South Africa (CODESA) and the refusal by some parties to join the multi-party negotiations for a non-racial, democratic South Africa.

60. Her delegation nevertheless considered that the South African Government was playing a major role in instigating continued violence in South Africa. The regime was expected to maintain law and order in the country. Instead the preliminary report reported incidents in which the South African police had taken part in violence, citing for instance the disclosures recently made by Dr. Gluckman that of 200 cases of post-mortem he had performed on prisoners, 90 per cent showed that they had been killed by police. Violence and covert activities not only threatened the smooth transition to democratic society, but also threatened the peace and security of the southern African States.

61. Poor economic and social conditions were also major impediments to peaceful transition in South Africa. Although legislation on education, health, housing and employment had been reviewed, inequality still existed and was surely a contributory factor to the violence in South Africa.

62. The international community had a duty to assist and facilitate the democratic process in South Africa since the situation there was so delicate. In that regard, her delegation welcomed the proposals put forward in the preliminary report on the role of the international community and also endorsed the Organization of African Unity (OAU) resolution on South Africa adopted in June 1993 which called upon the South African Government to carry out its responsibilities to end the violence and called upon all parties to abide by the provisions of the National Peace Accord and cooperate fully with the instituted peace structures, and to put into place a mechanism that would assist in voter education programmes and monitoring the electoral pool in South Africa. To that end the deployment of various observer missions in South Africa such as those by OAU, United Nations and the Commonwealth were encouraged to continue.

63. Although events in South Africa were moving in the right direction, it would be premature for the international community to relax existing sanctions and other measures which should be maintained until the process of eradicating apartheid was irreversible and a free and democratic society in place. Agreed mandatory sanctions in the areas of the arms embargo, oil supply restriction and certain types of investment should be strengthened.

64. The Sub-Commission should call upon the South African Government to allow the Special Rapporteur to travel to South Africa for the purposes of ascertaining the facts of the situation in future.

65. During the adoption of the provisional agenda for the current session of the Sub-Commission it had been stated that agenda item 5 (b) on the adverse consequences for the enjoyment of human rights of political, military, economic and other forms of assistance given to the racist regime of South Africa had been overtaken by recent events and that the item might be removed from the Sub-Commission's agenda. However, the preliminary report clearly testified to the importance of the issue, although it should now be looked at under a different angle, namely steps taken by the regime to eradicate apartheid and movement toward a non-racial and democratic South Africa. Further, military assistance was still being afforded the South African Government which was in turn instigating violence among the black population. In that regard, her delegation wished to see the agenda item maintained in the work of both the Sub-Commission and the Commission itself and the transition to democracy in South Africa as one of the sub-items. The Vienna Declaration and Programme of Action, while appreciating the progress made in dismantling apartheid still called upon the international community and the United Nations system to assist in the transition to democracy.

66. MR. MOAFI (Observer for Egypt) said that Egypt had attentively followed the transition in South Africa since President De Klerk's initiative. His country hoped that the basis of apartheid would be eliminated rapidly and to that end requested that measures should be taken to implement new policies without delay and a national Government should be set up. It welcomed the fact that a date had been set for elections in April 1994 but was concerned by recent events in South Africa in particular the violence which had delayed the democratization process. Some right-wing groups were trying to prevent democracy with assassinations and bombs. The responsibility of the South African Government to protect all the peoples of South Africa should be stressed.

67. There was a consensus in the international community on the need to protect human rights and implement human rights instruments in South Africa and it should link the acceptance of those standards to the admission of the country into the international community. The establishment of a democratic Government elected by all citizens with equal rights was imperative.

68. The OAU Summit in June 1993 had highlighted the attitude of Africa, which was that while progress had been made in South Africa the peaceful transition to democracy was under threat. The system of apartheid should be thoroughly eradicated. At that Summit, the Secretary-General of the OAU had been mandated to report on the implementation of the criteria agreed by the OAU Assembly of Heads of State and Government on the normalization of relations with South Africa. The OAU had asked the international community to maintain pressure on the South African regime by perpetuating the embargo on oil and arms exports until a democratically elected Government was in place. The OAU had set up a fund to enable the liberation movements to mobilize the black electorate.

69. His delegation endorsed the recommendations and conclusions of the preliminary report of the Special Rapporteur and insisted that the South African Government should take the necessary measures to establish a democratic regime.

70. Mr. YISHAN ZHANG (Observer for China) thanked Mrs. Attah for her objective and well-balanced report. In recent years great changes had taken place in the situation in South Africa, and the first multiracial elections were due to take place in April 1994. His Government welcomed the efforts made to find a peaceful solution and to establish a new united, democratic and non-racial State.

71. Mrs. Attah's report showed that there were still some international and domestic obstacles to be overcome. Further action by the international community was required, and item 5 (b) should be kept on the Sub-Commission's agenda until the anticipated new South Africa had become a reality. Unfortunately, Mrs. Attah had drafted her report outside South Africa, and it would therefore be advisable for her to establish links with the authorities inside the country.

72. Ms. CHEBAHI (Observer for the Syrian Arab Republic), noting that, at the World Conference on Human Rights, the international community had reaffirmed the need to end all forms of racism and racial discrimination, said that the world was apparently unable to eradicate apartheid and was witnessing the emergence of new outbursts of racism in the form of ethnic conflicts, ethnic cleansing and xenophobia. In the past two years, however, the Government of South Africa had made some encouraging reforms. Nevertheless, violence, tolerated by the police, was endangering the right to life. Her delegation supported Mrs. Attah's recommendations and hoped that the international community would continue to press for a united, democratic and multiracial society in South Africa.

73. Ms. KALNIETE (Observer for Latvia), making a statement equivalent to a right of reply, expressed the hope that the Sub-Commission would consider the progress achieved regarding minority rights in Latvia in the three years since the re-establishment of its independence. Latvia was committed to the elimination of any violation of human rights and fundamental freedoms. At the invitation of her Government, the United Nations had sent a fact-finding mission to investigate alleged discriminatory practices against minorities. Latvia had been unjustly accused, but it had benefited greatly from the mission's conclusions and recommendations.

74. Her Government was deeply concerned about the present situation in Bosnia and Herzegovina and hoped that the bloodshed would be stopped before the Muslim people was exterminated. The international precedent to divide a country that was the victim of military aggression by another country in the name of peace was a questionable solution. It would bring peace for a brief period but it would not solve the real problems of Bosnia's Muslims. As the Minister for Foreign Affairs of Bosnia and Herzegovina had stated, "There is no justice unless you are powerful or rich". Those words were true for small countries which did not have the military ability to defend their peoples, although military strength could not destroy a small nation's inalienable right to self-determination.

75. An attempt had been made to link the bloody violence in the former Yugoslavia to the present situation in the Baltic States. Did that mean that today's Baltic might become tomorrow's Yugoslavia? The repeated statements made in that connection by authorities of the Russian Federation were unbalanced, irresponsible and groundless. Latvia had been systematically accused of discriminating against its Russian-speaking population. Nevertheless Latvia's laws guaranteed all basic human rights and freedoms to all its inhabitants regardless of their citizenship. The experts from the Council of Europe who had considered the present Latvian legislation on minorities and the rights of foreigners had agreed that Latvia's laws were generally ahead of existing European standards. The CSCE High Commissioner on National Minorities had stated that there had been no evidence of persecution of the non-Latvian population since the re-establishment of Latvian independence and that there had been virtually no incidents pointing to inter-ethnic violence.

76. She was convinced that the Sub-Commission's experts based their conclusions on concrete facts gathered from specific documents and expert opinions. Latvia had received expert groups on human rights from the United Nations, the Council of Europe, the European Court of Justice, the European Parliament, CSCE and other international organizations. The comments and evaluations of those experts had been very similar to those of the United Nations fact-finding mission, which had concluded that the information received and examined by it did not reveal gross and systematic violations of human rights in Latvia. The summary of that mission's report had been circulated as United Nations document A/47/748. Her delegation would be grateful if it could be made an official document of the Sub-Commission at its forty-fifth session and circulated to all experts.

77. For more than a year Latvia had had to defend its honour because of a well-orchestrated propaganda campaign designed to prove that its commitment to democracy was false. At the same time little had been said about the fate of ethnic Russians living in Central Asia and the Caucasus. At present some 460,000 refugees were living in the territory of the Russian Federation after having fled from other areas of conflict, 85 per cent of them from conflicts in Central Asia and the Caucasus. Yet there was not a single refugee from the Baltic States in the territory of the Russian Federation. During the same period, 70,000 persons had migrated freely from the Caucasus back to the Russian Federation, but only 6,000 Russians had left Latvia to return to their homeland.

78. Ms. RENNEL (Observer for Estonia), commenting on the statement made on the previous day by Mr. Chernichenko regarding alleged discrimination against the Russian-speaking population in Estonia and Latvia, said that for over a year Estonia had been accused on several occasions of violating the human rights of its Russian-speaking population. It was apparent that, thinly veiled behind the alleged effort to defend the interests of ethnic Russians, attempts were being made by certain circles in Russia to continue to apply Superpower pressure politics and to keep Estonia within their sphere of influence.

79. It was impossible to evaluate the current tensions between Estonia and the Russian Federation without considering the historical context. Estonia

had been a sovereign and democratic European nation until, pursuant to the 1939 Hitler-Stalin Pact, it had been forcibly taken over and occupied by the Soviet Union. That annexation, which had never been accepted as legal by Western nations, had lasted for half a century. During that time ethnic cleansing, colonization and other genocidal measures had been employed against the Estonian people, drastically changing the demographic composition of the nation and reducing the Estonian share of the population from about 88 per cent to barely 60 per cent; at the same time the percentage of Russian-speakers had increased from about 8 per cent to over 40 per cent.

80. Having regained its independence in August 1991, Estonia was now restoring its legal system in order to provide the necessary framework for the functioning of the State structures and for strengthening democratic processes. Mindful of its responsibilities as a democratic nation, Estonia was continuing to work to solve the problems caused by its Soviet legacy peacefully and fairly, while fully respecting the human rights of all residents.

81. In order to disprove the charges made in the relentless campaign carried out by the Russian Federation, Estonia had opened its doors to numerous fact-finding missions. To date, 15 investigative commissions had visited Estonia, and none of them had found any deliberate or regular violations of human rights. Her Government had recently received the report of a United Nations fact-finding mission, which had not discovered any violations of human rights. It therefore seemed that the allegations against Estonia were politically motivated.

82. As for the so called "referendum" on national and territorial autonomy that had taken place at Narva, it should be pointed out that despite the fact that the referendum had been declared illegal, the Government of Estonia had refrained from using force to prevent it. In the statement which it had made after the "referendum", the Government had mentioned the numerous irregularities and abuses that had been monitored, but it was very difficult to see any link between that thesis and the alleged discrimination against the Russian-speaking population. The Government's statement also mentioned that less than 50 per cent of the inhabitants of Narva, including citizens of the Russian Federation, had participated in the so-called "referendum" and had thanked the majority of Narva's inhabitants for their constructive stance.

83. Estonia stood firmly against those forces which were striving to restore the Soviet empire and which incited dissent among non-citizens and provoked inter-ethnic conflict. In disregard of the true interests of its residents and in violation of the Constitution of the Republic of Estonia, the Narva City Council had decided to increase tensions within the country. Nevertheless, the Estonian Government was convinced that calm and stability would prevail. On 17 October 1993, democratic elections would take place for local governments, which would create a stable basis for cooperation and dialogue. Her Government guaranteed the peaceful holding of democratic elections at Narva and elsewhere in Estonia.

84. Mr. GUISSÉ said that the much discussed new forms of racism were really a resurgence of old forms of discrimination. However, whereas the period up to the end of the Second World War had been marked by the attempt of one race to

assert its superiority over others, leading to great loss of life, the present situation involved religious as well as ethnic discrimination. The Sub-Commission had to combat such practices.

85. More concrete measures were needed. For example, national legislations should be brought into line with international human rights law. Some countries had already taken that step, although there was still a gap between legislation and practice. In any case, it was essential that a judge should be able to base his judgement on the principles provided for in international law to combat racial discrimination. It was also necessary for people to be made aware of what discriminatory practices were. In that connection, the media and non-governmental organizations had important roles to play.

86. He supported Mrs. Warzazi's proposal concerning the establishment of a body to monitor the implementation of the standards on discriminatory practices. A list of countries that had given real content to those standards by incorporating them into their domestic law could be drawn up for distribution to all experts, Governments and non-governmental organizations. The latter should be encouraged to supply all the necessary information on human rights violations. Furthermore, the implementation of international standards in any field required a degree of political courage on the part of the national leaders who would have to arrange for their acceptance and application.

87. The universality and indivisibility of human rights was a fundamental principle of international law and any attempt to depart from it would only lead to the development of regional standards. Human rights were intended to protect the whole of mankind, although every country was entitled to its own distinctive culture.

88. Mr. ALFONSO MARTÍNEZ said that developments in the "post-modern" world were making the importance of agenda item 5 increasingly evident. He appreciated the remarks made by the representative of the International Association against Torture and noted that several speakers had pointed out how serious the situation had become in Europe. The tension generated in Los Angeles by the light sentences handed down in the Rodney King case were also a source of concern. Thus at present there was no room for any reduction of the international surveillance of new forms of racism and racial discrimination.

89. The Sub-Commission had responded well to the new developments. At its previous session it had taken the initiative of requesting the Commission on Human Rights to adopt specific practical measures to monitor the disturbing situation. However, in the debate on the subject it had become clear that many Governments, despite their public protestations, were reluctant to take concrete measures to combat racism. Fortunately, the Commission on Human Rights had agreed to the appointment of a special rapporteur to monitor manifestations of racism and xenophobia, whose report was due to be submitted next year.

90. Thanks were due to Mrs. Attah for her preliminary report and to her predecessor, Mr. Khalifa, for his annual analyses of the assistance given to the South African Government. The international community must follow closely

the transition to a post-apartheid regime. A great many elements of apartheid still survived, and their difficult elimination was closely linked with the democratization process. Mrs. Attah's report gave a clear idea of the problems involved in dismantling the long lasting effects of apartheid.

91. The dismantling of the consequences of apartheid therefore required continued monitoring, particularly bearing in mind the violence syndrome described in chapter II of the preliminary report. The question was: how long would it take to dismantle those consequences? According to paragraph 27, the causes of violence were complex and multifaceted but their origin was undoubtedly the system of apartheid. The extent to which the events of the last 70 years had contributed to the violence syndrome must be ascertained as they would clearly affect the transition to democracy. The economic factors set out in chapter III and their impact on education, health and income levels were all direct consequences of apartheid. It would be useful if Mrs Attah would go more deeply into all those aspects in her next report.

92. The excellent description of the impediments in the way of the transition to democracy set out in chapter IV were very useful, particularly the reference to the fighting between different groups and the activities of racist elements.

93. He agreed with Mrs. Attah regarding the importance of the contributions of the international community and of the Organization of African States.

94. He also concurred in her conclusion that it was the primary responsibility of the South African Government to maintain law and order but that the process of change through peaceful negotiations remained fragile. He agreed in particular with paragraph 90 (e) that a comprehensive policy be formulated to address the issue of access to illegal weapons which would otherwise be a destabilizing influence well into the future. Clearly, continued international monitoring of the democratic process in South Africa would be required for a long period to come.

95. He felt that it was essential that Mrs. Attah should visit South Africa to complete her report and he would urge the Government of South Africa to facilitate such a visit.

96. Mr. CHERNICHENKO said that he wished to comment on statements made by the observers for Latvia and Estonia without however intending in any way to seek confrontation with those countries. He had however received somewhat alarming information regarding them. The observer for Latvia had said that the Sub-Commission based its work on concrete facts. The following facts had come into his possession. An article published in the respected British newspaper The Guardian on 12 February 1993 had stated that the Head of State of Latvia, in a March 1992 interview published in the Government newspaper Diena, had said that Latvia was using South Africa as a model for solving its ethnic question.

97. In the same newspaper it had been reported that Latvia was possibly the only place in the world where monuments had been erected to honour the S.S. and that 19 such monuments had already been erected. While information

provided by the mass media could not always be accepted without reservation, nevertheless such information, when printed by a respected newspaper, did arouse some concern. He would be happy if the observer for Latvia could deny those statements.

98. He would also like to comment on the situation of Russian-speaking people in Latvia and Estonia. He had welcomed the statement by the observer for Latvia regarding the attachment of those two countries to human rights. In fact, however, the majority of Russian-speaking people in Latvia and Estonia who had been citizens of those Republics during the Soviet period and had lived there throughout that period, had now been deprived of their citizenship. In his view, such a situation violated the principles enshrined in the Universal Declaration of Human Rights to the effect that each person had the right to citizenship and that no one could be arbitrarily deprived of citizenship. The Russian-speaking population of Latvia and Estonia were accordingly victims of massive arbitrary deprivation of citizenship. Perhaps in dealing with such questions, use could be made of the practice in Russia and the Ukraine where the process was much more democratic.

99. The observer for Estonia had mentioned that her country was occupied. In an interview given to a Russian newspaper, Rossiyskiye Vesti, the Ambassador of Estonia in Moscow had stated that his county had been occupied for 50 years. In legal terms, the word "occupation" had two meanings. The first concerned the acquisition of land which did not belong to anyone and was not inhabited. That definition was not relevant. The second meaning referred to a military measure, namely, the temporary seizure by the troops of one State of the territory of another without any transfer of sovereignty being involved. Without in any way intending to condone the events of 1940, he wished to make it clear that, in 1940, the Soviet Union was not in a state of war with Latvia and Estonia and occupation could not therefore have been said to have taken place. Following the issuance to, and acceptance by those countries of ultimatums, they had been annexed; at that time however annexation had been allowed by international law then in force.

100. His intention had been merely to clarify that those Republics, from a legal point of view, had not been occupied by the Soviet Union and had legally been part of the Soviet Union. That point should be borne in mind in assessing all later events. He reserved his right to return to the issue at a later date.

101. Mr. KHALIFA said that in 1992, when he had renounced his mandate as Special Rapporteur, he had felt that the continued updating of the list of those assisting the racist regime of South Africa had become meaningless. The decision of President De Klerk in February 1990 had caused the instant demolition of the wall between South Africa and the world, with the result that the list no longer had any leverage and therefore served no useful purpose. He would never however believe that South Africa would really deliver on its promises. South Africa would never act except under intense pressure; that was a rare commodity in the current state of the world and it would be difficult to amass support for further action against South Africa.

102. He had no objection to retaining the original title of the item but considered that it would be useful to add a qualifying phrase to reflect the new mandate, such as "Monitoring progress to the complete eradication of apartheid in South Africa". The first priority was to end apartheid.

103. The CHAIRMAN suggested that a final decision on the title of the item should be taken when the Sub-Commission discussed its future work.

104. Mr. YIMER pointed out that the Sub-Commission had already taken a formal decision to delete the original title and replace it by a new title.

105. The CHAIRMAN said that the Sub-Commission retained the right to make a final decision on the title when it discussed its future work.

106. Mrs. ATTAH, Special Rapporteur, speaking on a point of order, said that the issue could not yet be regarded as settled. Many African countries wanted a further discussion on the issue.

107. Mr. BOSSUYT warned of possible inconsistencies in any title change. In paragraph 89 the report had specified the weakness of the economy among obstacles in the way of the path to democracy and paragraph 91 (c) contained an appeal to the international community to provide massive assistance to South Africa. Such an appeal would be inconsistent with the view that the Sub-Commission considered all economic assistance as having adverse consequences. The duty of the Sub-Commission was however to contribute to progress in South Africa.

108. Mrs. ATTAH, Special Rapporteur, said that she would not attempt to reply in detail to all the constructive remarks made by members, observers for States and one non-governmental organization on her preliminary report. She had taken careful note of all comments and would consider every point carefully; all aspects would be reflected in her next report.

109. The CHAIRMAN congratulated Mrs. Attah on a model report and also thanked Mr. Khalifa for his past contributions to the work of the Sub-Commission.

110. He said that the Sub-Commission had concluded its discussion of agenda item 5.

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED (agenda item 4) (A/CONF.157/23)

111. Mr. SANDERS (International Lesbian and Gay Rights Association) said that three representatives of his organization had been accredited to the World Conference on Human Rights and about a dozen open lesbians and gay men, from Australia, Austria, Brazil, Canada, Ecuador, Germany, Mexico, Peru and the United States, had participated. Representatives had spoken in the Plenary and in the Main Committee. The representatives of Australia, Austria, Canada, Germany and the Netherlands, in formal government presentations, had raised concerns regarding the human rights of lesbians and gay men.

112. In that connection he wished to draw attention to article 15 of the Vienna Declaration and Programme of Action, the first sentence of which stated

that respect for human rights and for fundamental freedoms without distinction of any kind was a fundamental rule of international human rights law. That sentence, as originally drafted, had contained a list of unacceptable grounds of discrimination but had not included sexual orientation among them. In the drafting committee, the representative of Canada had moved to add "sexual orientation" to the list; in response to that motion, the Secretary-General of the Conference had proposed the present wording which was clearly intended to be inclusive of the concerns of the members of his organization. The chairman of the Main Committee, in her report to the Plenary, had noted the concerns raised by Governments and non-governmental organizations regarding the rights of sexual minorities.

113. In the view of his organization, the World Conference on Human Rights had marked a new visibility for the human rights concerns of lesbians and gay men. The Sub-Commission should clearly take up that issue in its response to the World Conference on Human Rights.

ORGANIZATION OF WORK (continued)

114. The CHAIRMAN announced that the members of the Sessional Working Group on Detention would be: Mr. Guissé, Mr. Sacher, Mr. Boutkevitch, Mr. Despouy and, in his absence, Mr. Alfonso Martinez, and Mrs. Chavez.

The meeting rose at 1 p.m.